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Central Administrative Tribunal

~~HYDERABAD BENCH : AT HYDERABAD~~
NEW BOMBAY BENCH : CIRCUIT SITTING
at Nagpur.

O.A. No. 379 of 1988

Date of Decision : 19-4-1991

~~TXANXX~~

G.M.Hadke

Petitioner.

Shri A.S.Bhagat, Advocate.

Advocate for the
petitioner (s)

Versus

The Superintendent of Post Offices,
Wardha-442001, & 2 others.

Respondent.

Shri Ramesh Darda,
Standing Counsel for the Deptt.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

THE HON'BLE MR. P.S.CHAUDHURI, MEMBER (ADMN.).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgment? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

D.Surya Rao
(D.SURYA RAO)

P.S.Chaudhuri
(P.S.CHAUDHURI)

19-4-1991

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY
CIRCUIT BENCH AT NAGPUR

Original Application No.379 of 1988

Between:-

G.M.Hadke .. Applicant

and

1. The Superintendent of Post Offices,
Wardha-442001.
2. The Director, Postal Services,
Nagpur-440010.
3. The Member (Personnel), Postal
Service Board, New Delhi-110001.

.. Respondents

CORAM:

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

THE HONOURABLE SHRI P.S.CHAUDHURI, MEMBER(ADMN.).

Appearance:

For the Applicant : Shri A.S.Bhagat, Advocate.

For the Respondents : Shri Ramesh Darda, Standing Counsel
for the Department.

JUDGMENT

DATE: 19-4-1991

(AS PER HON'BLE SHRI D.SURYA RAO, MEMBER(J).)

1. The applicant herein was formerly working as Sub Post Master, Ravindranath Tagore Post Office, Wardha. He has filed this application seeking to question the order bearing No.F-6/Misc-15/82-83/DP-2/82, dt.6.2.85 passed by the 1st respondent imposing upon the applicant the punishment of compulsory retirement from service.

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2. The appeal preferred by the applicant dt.6-3-1985 was rejected by the Director of Postal Services, Nagpur, by an order dated 29-1-1986. Thereafter the applicant preferred a Review Petition to the Member (Personnel), Postal Service Board, New Delhi, which was rejected by an order dated 11-5-1987 and communicated to the applicant by the Superintendent of Post Offices, Wardha, alongwith his letter dated 11-5-1987, delivered to the applicant on 13-5-1987. Thereafter the applicant has preferred the present application. The order of punishment imposed upon the applicant was consequent to the Memo of charges dated 24-1-1983 issued to the applicant. 3 Articles of Charge were framed against the applicant. The first Article was that during the period from 1-6-82 to 30-6-82, the applicant himself affixed the postage stamps on RL.No.5004 on 28-6-82 and acted in contravention of rule 106 P&T Man.Vol.V and 3(1)(ii) of C.C.S. (Conduct) Rules, 1964, Whereas under the rules the tenderer of the letter is supposed to have fixed the stamp. The second article of charge was that the applicant had ~~defaced postage stamp~~ booked 25 Registered letters on 28-6-82 and he got the postage stamps which were affixed on the Registered Letters defaced by date stamp through ED packer RT Road, Whereas the SPM himself should deface all the postage stamps. The third article of charge was that the applicant had used an used up postage stamp of Rs.2/- denomination on a registered letter No.5004, dated 28.6.82 and thereby contravened the rules. An Inquiry Officer was appointed to inquire into the charges. The Inquiry Officer submitted his report on 12-8-1984 in which it was found that the applicant was not guilty of the charge No.1. In regard

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to charge No.2, the Inquiry Officer held that he found the applicant not blame-worthy and he had strictly adhered to the rule. In so far as charge No.3 is concerned, the Inquiry Officer found the applicant not responsible for the entire charge. Disagreeing with the findings of the Inquiry Officer in regard to the articles 2 and 3, the disciplinary authority (1st respondent) held that these two charges have been proved against the applicant and imposed upon him the punishment of compulsory retirement from service.

3. As already stated *supra*, the appeal and revision petition preferred by the applicant and the review petition preferred against the said orders were ~~rejected~~. The applicant ~~was~~ sought to question the order of punishment of compulsory retirement from service in the present application for various reasons and grounds as set-forth in the application.

4. On behalf of the respondents a reply has been filed denying the various contentions and averments made in the application.

5. We have heard the learned Counsel for the Applicant Shri A.S.Bhagat, and the learned Standing Counsel for the Department, Shri Ramesh Darda, on behalf of the respondents.

6. Shri A.S.Bhagat contends that apart from the various contentions raised by the applicant in his application, the present application is liable to be allowed on the

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ground that no reasonable opportunity was afforded to the applicant within the meaning of Article 311(2) of the Constitution and that principles of natural justice were not followed in the instant case since the enquiry officer's report was not furnished to the applicant by the disciplinary authority (1st respondent) before imposing the order of punishment dt. 6-2-1985. He ~~also~~ contends that the disciplinary authority ought to have furnished a copy of the enquiry officer's report togetherwith his reasons as to why he has differed with the findings of the enquiry officer, before passing the said order of punishment. The question whether non-furnishing of the Enquiry Officer's report before the disciplinary authority passes the final order of punishment is concluded both by a ^{decision of a} Full Bench of this Tribunal in T.A.2 of 1986 (Premnath K. Sharma vs. Union of India) and subsequently by the Supreme Court in Union of India & others vs. Ramzan Khan case (1990 (4) S.C. 456 Judgements Today). It has been held by the Supreme Court in the latter decision as follows:-

" 15. Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice

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out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report alongwith recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position.

" 18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

The principle of the aforesaid decision viz., that a reasonable opportunity should be afforded to make a representation against the enquiry officer's report would equally apply to a case where the disciplinary authority proposes to differ with the findings of an enquiry officer exonerating an employee. If the disciplinary authority proposes to differ with ~~these~~ findings, principles of natural justice would equally require issue of notice giving reasons as to why the authority proposes to differ with the findings and obtaining the employee's explanation/remarks in regard thereto.

This principle has been laid down by the Supreme Court in 1969 S.L.R. page 657 (Narayan Misra Vs. State of Orissa). That was a case wherein the disciplinary authority differed with the Inquiry Officer, who, after inquiry,



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acquitted the employee of the charges framed. The Supreme Court held that the disciplinary authority had without warning to the employee differed with the findings of the Inquiry Officer. The action of the disciplinary authority was set aside on the ground that this is against all principles of a fair play and natural justice. Applying the principle of the aforesaid decision of the Supreme Court to the facts of the present case, it would follow that the impugned order dt. ~~12.5.1983~~ 6-2-1985 is illegal, and contrary to the principles of natural justice. It is accordingly quashed and set aside.

7. This order, passed by us, will not, however, preclude the respondents from proceeding with the inquiry from the stage of receipt of the inquiry officer's report. Since the inquiry Officer's report has already been made available to the applicant, the question of furnishing it once again does not arise. If the disciplinary authority proposes to continue with the inquiry, he shall give the applicant a reasonable opportunity of representing against the disciplinary authority's decision to differ with the inquiry officer's findings, and only thereafter proceed with the inquiry. This observation made by us is not a direction to the respondents/disciplinary authority to take further action on the basis of the inquiry report and this is a matter left entirely to the discretion of the disciplinary authority. The question as to how the period from the date of removal from service till the date of the order of the Tribunal and subsequent period in the event of disciplinary proceedings being continued will be determined by the competent authority in accordance with the rules applicable to



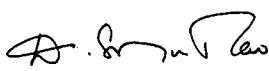
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Government servants in regard to whom an order of removal/dismissal/compulsory retirement from service has been set aside pursuant to the orders of a Court of Law/Tribunal.

8. With the above directions, the application is allowed. The parties are directed to bear their own costs.


(D. SURYA RAO)
MEMBER (JUDICIAL)


(P.S. CHAUDHURI)
MEMBER (ADMINISTRATION)

DATE: 19-4-1991

nsr